

Message Text

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ACTION L-03

INFO OCT-01 AF-10 NEA-10 *SO-00 SY-10 *CIAE-00 INR-10

NSAE-00 RSC-01 SPC-03 SC*-03 SCA-01 PRS-01 CPR- 2

SSO-00 NSCE-00 NRE-00 SS-20 NSC-10 USIE-00 /085 W

* ** ----- *031747

O R 0 1049Z JAN 74

FM AMEMBASSY MOG*DISCIO

TO SECSTATE WASHDC IMME IATE 1529

INFO AMEMBASSY ADDIS ABABA

AMEMB*SSY BEIRUT

LIMITED OFFICIAL USE MOGADISCIO 0013

ADD*S FOR RSO

BE*RUT FOR RMO AND RSS

E.O. 11652: N/A

TAGS: CASC

SUBJ: SOMALI DETENTION OF US MARINES

REF: A. STATE 001515; B. MOGADISCIO 0003

1. SUMMARY: EMBASSY HAS SENT NOTE TO FONOFF SETTIN FORTH IMMUNITIES OF MSG'S AND REQUESTING THAT*CRIMINAL CHARGES BE DROPPED AND;BAIL RETURNED. HOWEVER, IN VIEW OF PREVIOUS GSDR POSITION THAT: (1) SOMALI LAW AT VARIANCE WITH VIENNA CONVENTION AND (2) THAT MSGS ARE NOT MEMBERS EMBASSY ADMIN AND TECHNICAL STAFF, BELIEVE W* SHOULD BE PREPARED, IF NECESSARY, TO WAIVE IMMUNITY TO PE*MIT THEIR*APPEARAN*E AT JUDICIAL PRO-*CEEDING* AND PAYMENT OF F*NE. END SUMMARY.

*. BY NOTE OF JAN ARY 7, WE INFORMED*GSDR THA , IN ACCORDANCE WITH ARTI*LES 29, 31, AND 37 OF VIENNA CONVENTION, PUMPLIN AND VANDEVENDER, A* MEMBERS O EMBASSY'S ADMIN *ND TECHN*CAL STAFF , LIMITED O*FICIAL USE
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HAVE IMMUNITY FROM ARREST , DENTEN*ION, AN CRIMINA PROSECUTION.

NOTE REQUESTED THAT FONOFF NOTIFY APPROPRIATE SOMALI AUTHORITIES TO DROP CRIMINAL CHARGES AND TO RETURN BAIL MONEY. WE ARE CONSULTING LATER TODAY WITH LAWYER WHO ASSISTED*US IN FEN*IMAN CASE. WE WILL GIVE HIM COPY OF OUR NOTE AND ASK THAT HE DELIVER IT TO JUDGE O COURT WHICH HA* JURISDICTION.

3. HOWEVER, WE DOUBTFUL OMALIS WILL CHANGE THEIR POSITION IN FENTIMAN CASE OF A YEAR AGO THAT (1) SOMALI L*W AT VARIANCE WITH VIENNA CONVENTION ON IMMUNITY OF ADMIN AND TECH ICAL STAFF AND (2) MARINE GUARDS IN ANY CASE ARE SERVICE PERSONNEL RATHER THAN ADMIN AND TECHNICAL *TAF (WHEN EMBOFF MADE POINT OF MSG'S IMMUNITY AT POLICE STATI N ON JANUARY 1, SOMALI OFFICERS PRESENT SHRUGGED IT OFF).

4. WE ARE CONC*RNED THAT OUR REFUSAL TO PERMIT *ARINES APPEAR IN COURT OR PAY FINE COULD HAVE FOLLOWING DISADVANTAG S:

A. MINOR INFRACTION OF SOMALI CODE, W*ICH GSDR SO FAR APPEARS PREPARED TO REGARD AS SUCH, WOULD RISK BMCOMING MATTER OF "PRINCIPLE" AND "SOVEREIGNTY" FOR GSDR, WHICH NOTORIOUSLY* PRICKLY ON SUCH POINTS.

B. MARINES WOUL* PRESUMABLY BE SERVED WITH A SUBPOENA DE- LIVER TO EMBASSY FOR THEIR APPEARANCE IN COURT; IF MARINES IGNORED SUBPOENA, WARRANT FOR ARREST WOULD PRESUMABLY FOLLOW AND WE WOULD FACE PROBLEM OF SAFEGUARDING TWO MARINES IN EMBASSY UNTIL CASE RESOLVED (AS AS NECESSARY WIT**SGT. FEN- **MAN LAST YEAR).

C. COURT MORE LIKELY ASSESS HEAVIER*PUNISHMENT FOR THEIR "OFFENSE". ARTIC*E 561 OF SOMALI PENAL CODE PROVIDE* MAXIMUM PUNISHMENT OF IMPRISONMENT FOR ONE ONTH AND FINE OF SOMALI SHILLINGS 2,000 (APPROXIMATELY US\$3*0).

D. RESOLUTION OF CASE MIGHT WELL BE MUCH PROLONGED (SGT. PUMPLIN DUE DEPART MOGADISCIO ON RANSFER J*NUARY 1).

E. IF C*SE BECOME HIGH-LEWEL POLIT*CAL ISSUE HERE, THERE IS SLIGHT POSSIBILITY THAT GSDR WOULD VIEW *ATTER AS**UFFICIEN* "SLIGHT TO THEIR SOVEREIG TY" TO TOSS OUT A*LL MSGS. *(UGANDAN EXPUL**ON OF MARINES WAS HIGHLY PUBLICIZED HERE.)

5. WE THEREFORE THINK IT WOULD BE PREFERABLE IN THIS SPECIFIC CASE TO WAIVE IMMUNITY TO EXTENT OF PERMITTING PUMPLIN AND VANDEVENDER TO APPEAR IN COURT IF REQUESTED TO DO SO AND PAYING*LIMIT*D OFFICI* USE LIMITED OFFICI*L USE

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FINE IF LEVIED. WE WOULD, IN OUR DISCUSSIONS*WITH FONOFF AND COURTS, MAKE LEAR THAT THIS WAS WITHOUT ANY PREJ DICE TO OUR OVERALL POSITION ON *MMUNITIES AS REFLECTED IN OUR NOTES IN THIS CASE*AND PREVIOUSLY. WE BELIEVE ON B SIS OF INDICATIONS SO FAR, T AT IN SUCH CIRCUMSTANCES COURT WOU*D PROBABLY VIEW THIS CASE ACCORDING TO ITS MERITS, I.E., A M *OR BREACH OF JUDGMENT WORTHY OF REPRIMAND, SUS* ENDED SENTENCE, OR NOMINAL FINE.

6. WOULD APPRECIATE EARL* ADVICE, AS JU ICIAL REQUEST F R

PUMPLIN AND VANDEVENDER TO APPEAR IN COURT MAY BE RECEIVED ANY DAY, AND ESSENCE OF OUR RECOMMENDED STRATEGY, I.E., TO AVOID CONFRONTATION BY*PARTIAL WAIVER OF IMMUNITY, WOULD BEST BE SERVED IF WE WERE IN POSITION TO BEGIN TO IMPLEMENT IT WHEN THAT REQUEST COMES.

7. IF REQUEST FOR COURT APPEARANCE COMES BEFORE ADVICE FROM DEPT RECEIVED, WE WILL*REFER TO OUR NOTE AND INFORM FONOFF AND COURT THAT EMBASSY WILL SEEK INSTRUCTIONS FROM DEPARTMENT.
KIRK

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*** Current Classification *** LIMITED OFFICIAL USE

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